Income Tax - Gross Conservation Easement

Can a nonprofit agency claim the gross conservation easement income tax credit for the donation of a conservation easement, then sell the credit to another taxpayer?

There are two requirements that must be specifically addressed to determine whether this credit can be claimed by a nonprofit organization.

First, does the organization meet the definition of a "taxpayer" as defined in §39-22-522(1), C.R.S.: "For purposes of this section, "taxpayer" means a resident individual or a domestic or foreign corporation subject to the provisions of part 3 of this article, a partnership, S corporation, or other similar pass-through entity, estate, or trust that donates a conservation easement as an entity, and a partner, member, and subchapter S shareholder of such pass-through entity."

For a C corporation, or any organization that would be taxed under corporate rules, to qualify as a taxpayer it must be subject to the provisions of part 3 of article 22 of the Colorado Revised Statutes. For a tax exempt entity to be subject to taxation it must qualify under §39-22-112(2), C.R.S. as having "unrelated business taxable income, as computed under the provisions of the internal revenue code." Therefore a nonprofit corporation or organization would not qualify as a taxpayer unless it has unrelated business taxable income (UBTI) during the year of the conservation easement donation. If it does have UBTI during the year in question, then the organization would meet the first requirement.

For a nonprofit trust that donates an easement, it is not required that they be subject to any provisions of article 22. Therefore, a trust would automatically meet the first requirement.

Second, does the donation meet the requirement of a qualified conservation contribution pursuant to section 170(h) of the internal revenue code [§39-22-522(2), C.R.S.]. Section 170(h), among its restrictions, requires that the contribution be made exclusively for conservation purposes. In order to meet this requirement it must be shown that the nonprofit organization was not already responsible for protecting the conservation of the property, which would preclude the donation from qualifying for either the federal charitable deduction or the conservation easement credit.

A nonprofit organization must meet both of these requirements in addition to the general requirements of the law to qualify for the gross conservation easement tax credit. If the credit is claimed by the nonprofit organization, it can be used to offset any Colorado income tax due on the UBTI or it can be sold to another taxpayer under the rules of the credit.